

LAW OFFICES

ALBERT S. MICHALIK, PLLC

704 - 228TH AVENUE NE, SUITE 193

SAMMAMISH, WASHINGTON 98074

FACSIMILE COVER SHEET

**RECEIVED
CENTRAL FAX CENTER**

DEC 12 2003

OFFICIAL

Telephone: (425) 836-3030

Facsimile: (425) 836-8957

Date: December 12, 2003

Time: 4:45 PM

Number of pages (including this sheet): 10

To: United States Patent and Trademark Office

Attention: Petitions

Facsimile Number: (703) 872-9306

From: Albert S. Michalik

RE: Petition attached, Serial No. 09/502,970; Attorney Docket No. 2300

In re Application of:
CAPPS et al.

Group Art Unit: 2174

Serial No. 09/502,970

Examiner: KE, P.

Filed: February 11, 2000

For: Unified Navigation Shell User Interface

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition to Re-Submit Request for Reconsideration, a copy of the Request for Reconsideration with Certificate of Mailing, and supporting evidence, are being transmitted by facsimile to the United States Patent and Trademark Office in accordance with 37 C.F.R. 1.6(d) on the date shown below.

Date: December 12, 2003


Albert S. Michalik

The information contained in this facsimile transmission is legally privileged, confidential and/or exempt from disclosure under law and is intended only for the use of the individual or entity named above. If the reader of this transmission is not the intended or authorized recipient, you are hereby notified that any unauthorized distribution, dissemination, or copy of this transmission is prohibited. If you have received this transmission in error, please immediately notify us by telephone or facsimile. Thank you.

OFFICIAL

PATENT

Attorney Docket No. 2300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

DEC 12 2003

In re Application of:

CAPPS et al.

Group Art Unit: 2174

Serial No. 09/502,970

Examiner: KE, P.

Filed: February 11, 2000

For: Unified Navigation Shell User Interface

PETITION TO RE-SUBMIT REQUEST FOR RECONSIDERATION

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Petitioner hereby requests that the attached Request for Reconsideration (of the denial to grant the petition to withdraw the holding of abandonment in this matter) be entered, considered and granted. Petitioner submits that that the Request for Reconsideration was timely filed and received at the Patent Office, but for some reason has been lost at the Patent Office after receipt, as supported by the statement of facts and attached evidence. No fee is believed to be required with this petition; but Petitioner hereby authorizes any necessary fees to be charged to deposit account no. 50-1618.

Statement of Facts

1. On July 28, 2003, a Decision was mailed denying Petitioner's petition for a withdrawal of the holding of abandonment (because of incomplete evidence regarding Petitioner's prior Bellevue address). Petitioner was given two months from that date, or until September 28, 2003, to submit a request for reconsideration.
2. Petitioner submits that the Request for Reconsideration was timely mailed by Petitioner on September 9, 2003, (and in fact received at the Patent Office on September 12, 2003, as evidenced by the stamped postcard, discussed below). Petitioner is hereby informing the Office of the previous mailing or transmission of the correspondence, promptly after becoming aware (during a status check conducted by telephone earlier this week) that the Office has no evidence of receipt of the correspondence. Petitioner herewith is

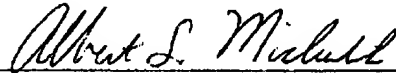
In re Application of: CAPPS et al
Serial No. 09/502,970

supplying an additional copy of the previously mailed correspondence and certificate of mailing.

3. Petitioner attests on a personal knowledge basis to the previous timely mailing.
4. As additional evidence, Petitioner has attached a copy of the postcard that was stamped by the Patent Office and returned, indicating that the correspondence was timely filed as well as received at the Patent Office on September 12, 2003, prior to the September 28, 2003 due date.
5. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

For at least the foregoing reasons, Petitioner submits that the Request for Reconsideration was timely mailed and should be considered.

Respectfully submitted,



Albert S. Michalik, Registration No. 37,395
Attorney for Applicants
Law Offices of Albert S. Michalik, PLLC
704 - 228th Avenue NE
Suite 193
Sammamish, WA 98074
(425) 836-3030 (telephone)
(425) 836-8957 (facsimile)

Date: December 12, 2003

In re Application of: CAPPS et al
Serial No. 09/502,970

CERTIFICATE OF TRANSMISSION

I hereby certify that this Petition to Re-Submit Request for Reconsideration, a copy of the Request for Reconsideration with Certificate of Mailing, and supporting evidence, are being transmitted by facsimile to the United States Patent and Trademark Office in accordance with 37 C.F.R. 1.6(d) on the date shown below.

Date: December 12, 2003


Albert S. Michalik

The Patent Office is requested to place its stamp on this card and thereby acknowledge receipt of the following:

Mailed: 9/9/2003 by ASM

Serial No. 09/502,970

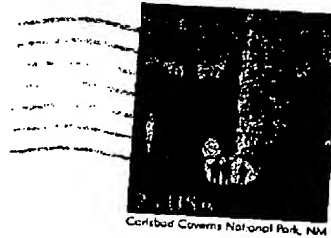
CAPPS et al.

Docket No. 2300


For: *Unified Navigation Shell User Interface*



Request for Reconsideration of Decision on Petition, Supporting
Evidence, Return Postcard



The Law Offices of ASM, PLLC
704 - 228th Avenue NE
Suite 193
Sammamish, WA 98074

98074+7222 

**RECEIVED
CENTRAL FAX CENTER****PATENT DEC 12 2003**

Attorney Docket No. 2300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**OFFICIAL**

In re Application of:

CAPPS et al.

Group Art Unit: 2174

Serial No. 09/502,970

Examiner: KE, P.

Filed: February 11, 2000

For: Unified Navigation Shell User Interface

**REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO WITHDRAW
THE HOLDING OF ABANDONMENT UNDER 37 § C.F.R. 1.181(A)**Commissioner for Patents
Alexandria, VA 22313-1450

Attn:

Dear Sir:

Petitioner hereby requests reconsideration of the denial to grant the petition to withdraw the holding of abandonment in this matter. Petitioner submits that that the Office communication on which the holding of abandonment is based was not, and could not in fact have been received by Petitioner, through no fault of Petitioner, for at least the additional reasons set forth in the Supplemental Statement of Facts set forth below. No fee is required.

Supplemental Statement of Facts

1. On March 25, 2003, a Notice of Abandonment was mailed to Petitioner (the undersigned attorney for applicants), addressed to 220 Eighth Avenue 704, Suite 193 Sammamish, Washington 98074 (which is an incorrect address). The basis for the Notice was that no timely response was filed to an Office communication (a restriction requirement) mailed July 2, 2002.
2. On May 19, 2003 Petitioner petitioned for a withdrawal of the holding of abandonment, and provided evidence indicating that the Office communication was not received by practitioner, and that a search of the file jacket and docket records was conducted and indicated that the Office communication was not received. A copy of the docket record was provided, along with several references thereto in practitioner's (Petitioner's) statement of facts, pursuant to MPEP §711.03(c).

In re Application of: CAPPS et al
Serial No. 09/502,970

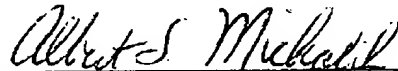
3. On July 28, 2003, a Decision was mailed denying the petition, because the evidence apparently should have directed as to why the mailing was not received at Petitioner's prior Bellevue address. However, Petitioner had not seen a copy of the July 2, 2002 Office communication, and thus had no way of knowing that the Office communication was mailed to the Bellevue address. The Patent Office obtained Petitioner's Sammamish address from *somewhere*, as evidenced by the Notice of Abandonment having been mailed to Sammamish, (albeit to a variation of applicants' correct address), and Petitioner thus presumed that because the Notice of Abandonment was mailed to a variation of applicants' Sammamish address, that the address submitted in the change of address form filed in the case (prior to July 2, 2002) was received but incorrectly entered at the Patent Office, thereby causing the problem.
4. Petitioner has thoroughly considered what might have happened to cause the Office communication to not have been delivered to Petitioner, and can only think of two possible scenarios, neither of which are any fault of Petitioner.
 - a. The change of address form (mailed in a group with a number of others prior to July 2, 2002) was delayed or lost in the mail or in its processing (or possibly not processed at all), and as a result the July 2, 2002 Office communication was mailed to Petitioner's Bellevue address. Petitioner has been unable to find concrete evidence that this particular change of address request was timely processed at the Patent Office; a search of Petitioner's files shows that the enclosed postcard was not returned. However as Petitioner filed no other correspondence in this matter (until the prior Petition), Petitioner submits that it appears that the Patent Office did at some time obtain Petitioner's Sammamish address, otherwise the Notice of Abandonment would not have been spontaneously sent to Sammamish, WA.
 - b. Notwithstanding, even if the Office communication was in fact mailed to Petitioner's Bellevue address, then the Post Office should have forwarded it to 704 228th Avenue NE, Suite 193 Sammamish Washington 98074. Petitioner declares that the Post Office was instructed to forward all mail addressed to the Bellevue, WA address to Petitioner's Sammamish address in late May 2002 (well in advance of the July 2, 2002 mailing date of the Office communication); this forwarding address continues to today, as evidenced by a copy of an unrelated envelope recently mailed to Petitioner's former Bellevue address and properly forwarded to Petitioner's correct Sammamish address). If indeed sent to Petitioner's former Bellevue address, then a Postal error also occurred, as no such forwarding ever took place, and Petitioner did not receive the Office communication.
5. Regardless of whether sent to Bellevue or to an erroneous address in Sammamish, Petitioner did nothing incorrect, and either a Patent Office or Post Office error (or both) was responsible for Petitioner not having received the Office communication.
6. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true; and further that these

In re Application of: CAPPS et al
Serial No. 09/502,970

statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

For at least the foregoing reasons, Petitioner submits that the petition to withdraw the holding of abandonment be granted, and requests that the Office action be re-mailed.

Respectfully submitted,



Albert S. Michalik, Registration No. 37,395
Attorney for Applicants
Law Offices of Albert S. Michalik, PLLC
704 - 228th Avenue NE
Suite 193
Sammamish, WA 98074
(425) 836-3030 (telephone)
(425) 836-8957 (facsimile)

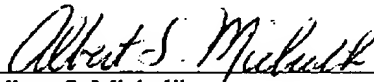
Date: September 9, 2003

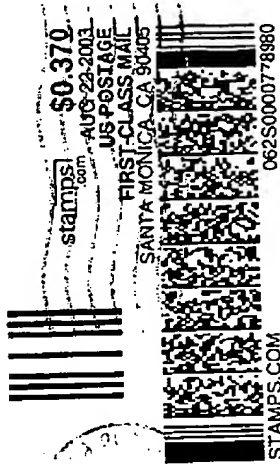
In re Application of: CAPPS et al
Serial No. 09/502,970

CERTIFICATE OF MAILING

I hereby certify that this REQUEST FOR RECONSIDERATION along with supporting evidence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450.

Date: September 9, 2003


Albert S. Michalik



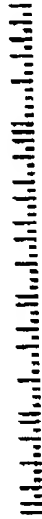
MICHAEL

Roger Wylie

14645 BEL RED RD STE 103

BELLEVUE WA 9

MICH645* 980072019 1203 17 00/20/03
NOTIFY SENDER OF NEW ADDRESS
MICHAEL K
PMB 193
704 228TH AVE NE
SAMMAMISH WA 98074-7222



Stamps.com
3420 Ocean Park Blvd Ste 1040
Santa Monica CA 90405-3324